WHITE ROSE CORP.

IBLA 83-106 Decided April 13, 1983

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 17360 through I MC 17363.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

> Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where there is no evidence that assessment work was performed, the consequence must be borne by the claimant.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

> The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744

(1976) is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Evidence: Presumptions--Evidence Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their duties.

APPEARANCES: A. L. Lenz, vice president, White Rose Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by White Rose Corporation from the Idaho State Office, Bureau of Land Management (BLM), decision dated October 4, 1982, which declared the unpatented White Rose, White Rose Nos. 2, 3, and 4 placer mining claims, I MC 17630 through I MC 17363, abandoned and void because no proof of labor or notice of intention to hold the claims for the period ending September 1, 1981, was filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims were located before October 21, 1976, and were recorded with BLM August 20, 1979.

Appellant states that the required proof of labor for the claims was recorded in Boise County, Idaho, October 1, 1981, and on October 2, 1981, a copy of the recorded proof was delivered to BLM for which a receipt was issued. Appellant asserts that adverse parties have occupied the claims and it has been impossible to retrieve the records of the claims, and to produce the BLM receipt issued October 2, 1981.

[1] Section 314 of FLPMA, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work for each assessment year be filed in the proper office of BLM within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation with BLM.

Despite appellant's statement that the document was properly and timely delivered to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Absent a receipt from BLM for the proof of labor, it must be held that BLM never received it.

This Board has no authority to excuse lack of compliance with the statutes or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] As the Board stated in Lynn Keith:

> The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

[3] A legal presumption of regularity attends the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Kephart v. Richardson, 505 F.2d 1085, 1090 (3rd Cir. 1974); Lawrence E. Dye, 57 IBLA 360 (1981). Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761 (D.C. Cir. 1943).

BLM has asserted that it can find no record of receipt of the subject proof of labor. Accordingly, we find the assertions of appellant do not constitute a sufficient predicate for holding that the the proof of labor was properly delivered to BLM and that BLM then lost or misplaced it.

Appellants may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge.